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2 **LAW OFFICES OF TORY M. PANKOPF**
3 **TORY M. PANKOPF, LTD.**
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5 Attorney for Defendants,
6 Tory M. Pankopf Ltd. and
7 Tory M. Pankopf

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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 WESLIE W. JOHNSON,

13 Plaintiff,

14 v.

15 TORY M. PANKOPF, TORY M. PANKOPF,
16 LTD., a professional corporation: BRYANT K.
17 CALLOWAY, and DOES 1 through 10,
inclusive,

18 Defendants.

19
20 CASE NO. 13-cv-00666-JCM-CWH

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22 **ANSWER OF TORY M. PANKOPF,
23 LIMITED AND TORY M PANKOPF**

24
25 **DEMAND FOR JURY TRIAL**

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28 Defendants TORY M. PANKOPF, LTD. (the “Firm”), a Nevada Professional
Corporation, and TORY M. PANKOPF (“Pankopf”), individually, (collectively “Defendants”),
a Nevada Professional Corporation, by and through their undersigned counsels of record, Tory
M. Pankopf for the Firm and the Firm for Pankopf, for their Answer to the Complaint dated
January 7, 2013 (“Complaint”) and filed by plaintiff WESLIE W. JOHNSON (“Plaintiff” or
“Johnson”) makes this demand for a jury trial and hereby responds as follows:

FIRST CAUSE OF ACTION

(Breach of Contract)

3 1. Defendants admit Pankopf is a member of the State Bar of California. Pankopf's
4 California Bar License Number is 202581. Pankopf is also a member of the Nevada State Bar
5 and his Nevada State Bar License Number is 7477. Pankopf represented Johnson in:

6 a) an action filed on June 10, 2009, in the United States District Court, Southern
7 District of California, Case Number 09-CV-01262, Wes W. Johnson v. HOMECOMINGS
8 FINANCIAL, a Delaware Limited Liability Company, GMAC MORTGAGE, a Delaware
9 Limited Liability Company, DEUTSCHE BANK NATIONAL TRUST COMPANY, a Nevada
10 Corporation, DEUTSCHE BANK TRUST COMPANY AMERICAS as Trustee for RALI
11 2007QA1, a State of New York Chartered Bank, EXECUTIVE TRUSTEE SERVICES, a
12 Delaware Limited Liability Company, PITE DUNCAN, a California Limited Liability
13 Partnership, regarding multiple causes of action pertaining to the November 19, 2008,
14 foreclosure sale of the that certain real property commonly known as 737 James Lane, located
15 in Incline Village, Nevada, 89453 (hereinafter “James Ln”), and owned by Tahoe-Reno
16 Development, a Nevada Limited Liability Company;

17 1) On or about November 28, 2006, Johnson had borrowed \$1,323,000.00 from
18 Homecomings Financial, LLC, which was secured by a first deed of trust on James Ln and an
19 additional \$300,000.00 from Homecomings which was secured by a second deed of trust on
20 James Ln. On November 1, 2007, Johnson defaulted on his note secured by the first deed of
21 trust and the lender foreclosed;

22 2) On December 3, 2008, the Firm was retained by Johnson to represent him
23 regarding the foreclosure of James Ln. In particular, for the purpose of defending the unlawful
24 detainer action initiated in the Incline Village Justice Court. Upon obtaining a stay of the
25 unlawful detainer action, Johnson directed the Firm to have Pankopf file an action in the
26 Southern District of California where one of the defendants was domiciled;

27 3) Pursuant to the James Ln retainer agreement, Johnson was required to deliver
28 the certificate of ownership to his Harley Davidson motorcycle which he did do. The Firm was

1 to hold it until after the binding arbitration decision the matter pending before the United States
2 District Court, District of Nevada, Case Number 05-CV-00321-RAM, Wes Johnson v Wells
3 Fargo Bank, N.A. (hereinafter, the “Wells Fargo Matter”). At which time the Firm had the
4 option to sell the Harley to pay all outstanding legal fees and costs, and/or withdraw funds from
5 his attorney/client trust account to pay Johnson’s outstanding legal fees. At no time during the
6 Firm’s representation of Johnson in the James Ln matter, did Johnson pay any outstanding legal
7 fees or costs;

8 4) The Firm represented Johnson in the federal action until Pankopf was
9 substituted out on October 11, 2011;

10 b) Defense of an unlawful detainer action filed on March 19, 2009, in the Superior
11 Court of California, County of San Luis Obispo, Case Number LC 096204, JP Morgan Chase,
12 N.A. v Wes Johnson, pertaining to the foreclosure sale of his residence located at 109 Erna
13 Way, Grover Beach, California, 93449 (the “Erna Way matter” or “Erna Way”);

14 1) The unlawful detainer action was removed to the United States District Court,
15 Central District of California and subsequently remanded to state court;

16 2) Pankopf successfully defended the unlawful detainer action and obtained a
17 dismissal with prejudice;

18 3) Johnson never paid his legal fees during the litigation;

19 c) During the pendency of the unlawful detainer action, on June 5, 2009, Johnson
20 directed Pankopf to initiate an action in the United States District Court, Central District of
21 California, Case Number CV09-04048, Wes Johnson v JP Morgan Chase Bank, N.A., et. al.,
22 pertaining to causes of action in defense of the foreclosure sale regarding the note secured by
23 the deed of trust on Erna Way;

24 1) On June 3, 2010, Johnson voluntarily dismissed the federal action without
25 prejudice;

26 2) Johnson never paid his legal fees during the litigation;

27 d) On June 3, 2010, Johnson directed Pankopf to re-file the complaint against JP
28 Morgan Chase in the Superior Court of California, County of San Luis Obispo, Case Number

1 CV 100342, Wes Johnson et. al. v JP Morgan Chase, N.A., pertaining to the foreclosure sale
2 regarding the note secured by the deed of trust on Erna Way;

3 1) The Firm represented Johnson in the action until Pankopf was substituted out
4 on or about September 2011;

5 2) Johnson never paid his legal fees during the litigation.

6 Defendants deny Johnson's allegation that the claims alleged in this action arise from
7 the actions and omissions of Pankopf in the above described actions. Defendants admit they are
8 domiciled in Nevada and have been absent from California for more than a year.

9 2. Defendants admit that the Firm is a Nevada professional corporation and the Firm's
10 shares are solely owned by Pankopf. Defendants deny the allegation that Pankopf utilizes the
11 Firm to conduct his practice of law.

12 3. Paragraph 3 consists of legal assertions as to which no response is required. To the
13 extent a response is required, upon information and belief, Defendants admit the allegations of
14 Paragraph 3 in that defendant, BRYANT K. CALLOWAY ("Calloway") had been disbarred by
15 the State Bar of California and never notified Plaintiff of his disbarment.

16 4. Defendants deny the allegations of paragraphs 4-5.

17 5. Paragraph 6 consists of legal assertions as to which no response is required. To the
18 extent a response is required, upon information and belief, Defendants admit Johnson retained
19 the Firm to represent him in the Wells Fargo matter and multiple other legal matters, and an
20 attorney/client relationship between Defendants and Johnson. Defendants deny Calloway was
21 their agent. Defendants deny Calloway was associated in by them. Defendants admit that
22 Johnson authorized and directed them to retain Calloway to represent Johnson for the sole
23 purpose of preparing for and assisting with the binding arbitration trial pertaining to the Wells
24 Fargo matter. Defendants admit that fee agreement specified that the Firm would receive a
25 contingency fee of 35 % of any settlement or judgment recovered in the Wells Fargo matter that
26 was less than or equal to \$500,000.00 or 37.5% of any settlement or judgment less than or equal
27 to \$1,000,000.00. Regardless, the fee agreement speaks for itself.

28 6. Defendants deny the allegations of paragraphs 7, 8, and 9.

1 7. Pursuant to Johnson's fee agreement with Calloway, Defendants admit the allegation
2 of paragraph 10 in part in that Calloway was paid his entire legal fee of \$73,045.25 earned for
3 his assistance with the preparation for and binding arbitration trial regarding the Wells Fargo
4 matter. Defendants deny the general allegations regarding their alleged actions and omissions
5 in the complaint, and, based thereon, deny Calloway was aware.

6 8. Paragraph 11 consists of an allegation that is vague, ambiguous, and unintelligible as
7 drafted, based thereon, Defendants deny it.

8 9. Paragraphs 12, 13, and 14 consist of legal assertions as to which no response is
9 required. To the extent a response is required, upon information and belief, Defendants deny
10 the allegations of Paragraphs 12, 13, and 14.

11 ||| 10. Defendants deny the allegations of paragraphs 15, 16, 17, and 18.

12 11. Paragraphs 19, 20, and 21 consist of legal assertions as to which no response is
13 required. To the extent a response is required, upon information and belief, Defendants deny
14 the allegations of Paragraphs 19, 20, and 21.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Constructive Trust Fraud and Fraud)

17 12. As to paragraph 22, Defendants incorporate by reference their responses to the
18 allegations contained in paragraphs 1 – 21 as if set forth here in full.

19 13. Paragraphs 23, 24, 25, 26, 27, and 28 consist of legal assertions as to which no
20 response is required. To the extent a response is required, upon information and belief,
21 Defendants deny the allegations of Paragraphs 23, 24, 25, 26, 27, and 28.

THIRD CAUSE OF ACTION

(Conversion)

24 14. As to paragraph 29, Defendants incorporate by reference their responses to the
25 allegations contained in paragraphs 1 – 21 as if set forth here in full.

26 15. Paragraphs 30, 31, and 32 consist of legal assertions as to which no response is
27 required. To the extent a response is required, upon information and belief, Defendants deny
28 the allegations of Paragraphs 30, 31, and 32.

FOURTH CAUSE OF ACTION

(Legal Malpractice)

3 16. As to paragraph 33, Defendants incorporate by reference their responses to the
4 allegations contained in paragraphs 1 – 21, 23, 25, and 26 as if set forth here in full.

5 17. Paragraphs 34, 35, 36, 37, and 38 consist of legal assertions as to which no response
6 is required. To the extent a response is required, upon information and belief, Defendants deny
7 the allegations of Paragraphs 34, 35, 36, 37, and 38.

FIFTH CAUSE OF ACTION

(Accounting)

10 18. As to paragraph 39, Defendants incorporate by reference their responses to the
11 allegations contained in paragraphs 1 – 21, 23 - 28, 30 - 32, and 34 - 38 as if set forth here in
12 full.

13 ||| 19. Defendants deny the allegations contained in paragraphs 40 and 41.

AFFIRMATIVE DEFENSES

16 Defendant(s) hereby allege(s) the following affirmative defenses. All possible
17 affirmative Defenses may or may not have been asserted herein insofar as sufficient facts were
18 not available to the Defendant after reasonable inquiry upon the filing of this pleading and
19 therefore, the Defendant asserts the following defenses based in fact or upon reasonable belief
20 and hereby reserve the right to amend this Answer to allege appropriate or additional defenses,
21 if subsequent investigation or discovery so warrants.

SECOND DEFENSE

23 The Complaint fails to state a claim against Defendant upon which relief can be granted.

THIRD DEFENSE

25 The claims asserted against Defendant are barred in whole or in part to the extent that
26 any damage or injury sustained or suffered by the Plaintiff in this action was caused in whole
27 or in part or was contributed to by the acts or omissions of third persons or parties other than
28 Defendant over whom Defendant had no control.

FOURTH DEFENSE

The damages complained of in Plaintiff's Complaint were not factually and/or legally caused by Defendant's activities.

FIFTH DEFENSE

The claims of the Plaintiff are barred in whole or in part to the extent that the conduct, action or inaction of the Plaintiff constitutes an estoppel, laches, consent or waiver.

SIXTH DEFENSE

The claims of Plaintiff are barred in whole or in part to the extent the conduct of defendant under the circumstances in this matter were reasonable, in good faith, and without malice.

SEVENTH DEFENSE

The claims of Plaintiff are barred in whole or in part to the extent the conduct of defendant at the time and place and on the occasions mentioned in the complaint were justified, lawful, and in good faith.

EIGHTH DEFENSE

Some or all of Plaintiffs claims are barred by the applicable statute of limitations.

NINTH DEFENSE

Any claim or cause of action that Plaintiff may have had, in whole or in part, is barred because Plaintiff has failed to join all necessary and/or indispensable parties to this action.

TENTH DEFENSE

If Plaintiff was injured or damaged, which injury or damage is denied, the injury and damage was caused solely by the acts, wrongs, or omissions of Plaintiff himself or by intervening causes or by other persons, entities, forces, and/or things over which Defendant had no control and for which Defendant is not responsible.

ELEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

1 **TWELFTH DEFENSE**

2 Plaintiff is primarily responsible for any damages sustained, which damages are denied.

3 **THIRTEENTH DEFENSE**

4 The claims asserted against Defendant are barred to the extent that the claims asserted,
5 including any claimed damages, are a result of Plaintiffs failure to comply with applicable
6 laws, regulations, rules and/or terms of the agreement.

7 **FOURTEENTH DEFENSE**

8 The Complaint fails to allege facts or a cause of action sufficient to support a claim for
9 costs of suit and expenses.

10 **FIFTEENTH DEFENSE**

11 Plaintiff may not recover on the claims pled in the Complaint because the damages
12 sought are too speculative and remote.

13 **SIXTEENTH DEFENSE**

14 Plaintiff may not recover on the claims pled in the Complaint because the Plaintiff's
15 actions with respect to the Defendant is and continue to be arbitrary and capricious and are
16 violative of the U.S. and Nevada Constitution.

17 **SEVENTEENTH DEFENSE**

18 Plaintiff has failed to mitigate its damages.

19 **EIGHTEENTH DEFENSE**

20 It has been necessary for the Defendant to employ the services of an attorney to defend
21 this action and a reasonable sum should be allowed Defendant as and for attorney's fees,
22 together with their costs expended in this action.

23 **NINETEENTH DEFENSE**

24 Defendant hereby incorporates by reference those affirmative defenses enumerated in
25 FRCP 8 as if full set forth herein. Defendant reserve the right to assert other different and
26 related defenses as may become available or appear during the discovery proceedings in this
27 case and hereby reserve the right to amend this Answer to assert any such defense.

TWENTIETH DEFENSE

Defendant deny each and every allegation of the Complaint not specifically admitted or otherwise pled to herein and Defendant objects to all the California statute based claims on the grounds that California law is not applicable.

TWENTY-FIRST DEFENSE

At all times herein mentioned, Plaintiff had authorized Defendants to maintain a lien in all settlements, judgments, or awards received in each and every legal matter Plaintiff was involved in and, further, authorized Defendants to pay Plaintiff's outstanding legal bills from any recovery obtained in the Wells Fargo matter.

Defendants respectfully requests that:

- A. Plaintiff takes nothing by its complaint;
- B. The Court enter judgment in favor of Defendants;
- C. The Court award Defendants their attorney's fees and costs; and
- D. Any other relief the Court deems appropriate.

Dated this 14th day of June, 2013.

By: /S/ TORY M. PANKOPF
TORY M. PANKOPF, ESQ.
Attorney for Defendant,
Tory M. Pankopf, Ltd.

CERTIFICATE OF SERVICE

I certify that I am an employee of TORY M. PANKOPF, and that on this day, I deposited for mailing at Reno, Nevada, a true and correct copy of:

ANSWER OF TORY M. PANKOPF, LIMITED AND TORY M PANKOPF

UPON:

Bryant K. Calloway.
26741 Portola parkway, Suite 1E #620
Foothill Ranch, California 92610

Weslie W. Johnson
POB 7499
Incline Village, NV 89450